

NO. 27911

IN THE SUPREME COURT OF THE STATE OF HAWAII

GENEVIE MOMILANI KAINA, Plaintiff-Appellant

vs.

MARK P. GELLMAN, D.O.; CHERYL VASCONCELLOS;
HANA COMMUNITY HEALTH CENTER; DOES 1-20; INCLUSIVE
Defendants-Appellees

K. HAMAKADO
CLERK, APPELLATE COURTS
STATE OF HAWAII

2006 MAY 26 PM 2:51

FILED

APPEAL FROM THE SECOND CIRCUIT COURT
(CIV. NO. 03-1-0259)

ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon consideration of: (1) Defendants-Appellees' motion to dismiss the appeal of Plaintiff-Appellant Genevieve Momilani Kaina for lack of jurisdiction; (2) the motion to expedite decision on the motion to dismiss the appeal; (3) the notice of withdrawal of the motion to expedite consideration of motion to dismiss and the motion to dismiss; (4) the papers in support and opposition; and (5) the records and files herein, it appears that: (1) the right of appeal is purely statutory and exists only when given by some Constitutional or statutory provision. Chambers v. Leavy, 60 Haw. 52, 57, 587 P.2d 807, 810 (1978) (citations omitted); (2) pursuant to HRS § 641-1(a), which governs appeals in civil cases, appeals are allowed in civil cases only from final judgments, orders, or decrees; (3) there is no final judgment, order, or decree in this case; (4) Appellant is appealing from an interlocutory order denying a motion to consolidate; (5) the circuit court did not grant Appellant leave

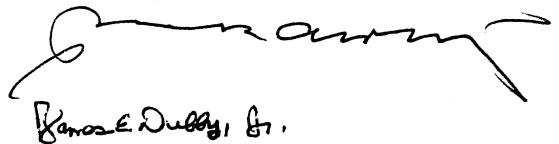
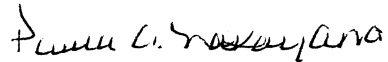
to take an interlocutory appeal pursuant to HRS § 641-1(b); (6) the order denying the motion to consolidate does not finally determine claims of right separable from and collateral to rights asserted in the action, and is not independent of the cause itself; thus, the collateral order doctrine allowing for an immediate appeal is inapplicable. See Chuck v. St. Paul Fire & Marine Ins., Co., 61 Haw. 552, 555, 606 P.2d 1320, 1323 (1980) (citing Cohen v. Beneficial Loan Corp., 337 U.S. 541, 546 (1949)); and (7) this appeal from an interlocutory order is premature, and this court lacks jurisdiction. Therefore,

IT IS HEREBY ORDERED that this appeal is dismissed as premature for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 26, 2006.

William A. Bordner
and John Reyes-Burke
for defendants-appellees
on the motions

R. Steven Geshell
Dennis L. Buckley
for plaintiff-appellant
in opposition


Dennis L. Buckley, Sr.